ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF ILLINOIS.[1]

SUPREME COURT OF MASSACHUSETTS.[2]

SUPREME COURT OF NEW YORK.[3]

COURT OF APPEALS OF NEW YORK.[4]

ACTION.

Right of action—whether it is extinguished by a payment by a third person.—Where A. is primarily liable, and B. only secondarily, A. may still be sued for the benefit of B., though B. has paid the debt.: *Am. Express Co.* v. *Haggard*, 37 Ills.

Thus where a package of money sent by express was never received by the one to whom it was sent, but was receipted for by his clerk through mistake, the father of the clerk, on being apprised of the circumstances, paid the amount of the loss to the owner. It was held this payment was not for the benefit of the express company, and discharged no right of action which existed against them. The owner might still sue the company to recover the money lost, for the use of the father of the clerk, and the clerk was a competent witness in such action: *Id.*

ASSIGNMENTS FOR BENEFIT OF CREDITORS.

Liability of Assignees.—Where the assignees of a lessee leased the premises for the best price they could obtain, and paid to the landlord all that they received, which was accepted by him, and they surrendered the possession: *Held*, that the assignees, having fully administered and paid out according to the terms of the assignment, all the moneys they had received from the assigned estate, could at most only be charged, *personally*, with the value of the use and occupation of the premises: and that evidence to determine that value should have been received: *Jermain* v. *Pattison*, 46 Barb.

The liability of assignees under an assignment for the benefit of creditors, is to be determined by the same rule which applies to executors, under similar circumstances, *it seems*: *Id.*

CORPORATION.

To what Extent liable for the Acts of their Employees.—All corporations act by and through their agents, for whose acts, in the line of their business, the corporation appointing them are held liable. A corporation will be held responsible for the unlawful acts of its employees or agents, which include wilful injuries, or injuries resulting from gross negligence: *Ill. Central Railroad Co.* v. *Read*, 37 Ills.

The distinction made by the New York courts, between the negligence of the corporation, acting through its president and board of directors, and the negligence of its employees or servants and agents, is not recognised in this state: *Id.*

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[1] From Hon. N. L. Freeman, Reporter, to appear in 37 Ills. Reports.

[2] From Charles Allen, Esq., Reporter, to appear in vol. 11 of his Reports.

[3] From Hon. O. L. Barbour, Reporter, to appear in vol. 46 of his Reports.

[4] From Joel Tiffany, Esq., Reporter, to appear in 34 New York Reports.

Subscription to Stock.—Defendant subscribed to the capital stock for the purpose of building a seminary, and delivered his subscription to the plaintiff—the seminary incorporation. The seminary buildings were built, and the defendant refused to pay his subscription. Suit was commenced by plaintiff to recover the same. *Held*, that the delivery of the subscription to the plaintiff, the demand of payment, and the subsequent suit to recover the same, were sufficient evidence of acceptance by the plaintiff: *Richmondville Union Seminary* v. *McDonald*, 34 N. Y.

Held, also, that the obligation resting on the corporation to issue stock to the defendant to the amount of his subscription, and his consequent power to control the corporation to that extent, constituted a sufficient consideration for his promise to pay it: *Id.*

Criminal Law.

Indictment.—Where the accused is indicted in the county in which he is apprehended, for an unlawful marriage in another county, the indictment must show his apprehension in the county in which he is indicted; that being a fact indispensable to authorize the Court of Sessions of the latter county to try the accused: *Houser* v. *The People*, 46 Barb.

It is not enough that this jurisdictional fact is stated in the caption to the indictment, or record of conviction; for the reason that it is not a fact of which the Court of Sessions can take judicial notice: *Id.*

The omission of such an averment, in the indictment, is not a defect of form, but of substance. It is a material defect, and is not cured by the statute (3 R. S., 5th ed., p. 1019, § 54): *Id.*

False Pretences.—In an indictment for obtaining money by false pretences, it is sufficient to state, negate, and prove one false pretence; and the materiality and influence of such pretence is a question for the jury, unless, upon the face of the indictment, the pretence appears clearly to be immaterial: *Thomas* v. *The People*, 34 N. Y.

It is sufficient if, upon the face of the indictment, a false pretence is alleged which is capable of defrauding by inducing a credit, &c.: per Wright, J.: *Id.*

Deed.

Quit-claim Deeds— What will pass thereby.—While a quit-claim deed is as effective to pass title as a deed of bargain and sale, still, like all other contracts, it must be expounded and enforced according to the intention of the parties, so as to pass only such land as would be properly embraced in the language used: *Hamilton* v. *Doolittle*, 37 Ills.

If the words used in the quit-claim deed indicate an intention on the part of the grantor, to pass only such land as he owns at the time of its execution, then lands embraced in a prior valid deed will be held to be reserved from its operation, and will not pass thereby, although the prior deed remains unrecorded: *Id.*

But a prior deed which is void, or even voidable, is not regarded as embraced in such a reservation in a subsequent quit-claim deed; and the subsequent deed will, in such case, be upheld as binding, and sufficient to pass the title as against the prior conveyance: *Id.*

Or, where the prior deed is so insufficiently executed, as regards the certificate of acknowledgment, that its execution cannot be proven thereby, and its execution cannot be otherwise proven so that it can be

admitted in evidence as a conveyance, it cannot be held to constitute a conveyance, and so will not control the operation of a subsequent quit-claim deed, which was designed to pass all the lands owned by the grantor at the time of its execution: *Id.*

ESTOPPEL.

Requisites of.—In order to create an estoppel *in pais*, the declarations or acts relied upon must have been accompanied by a design to induce the party who sets up the estoppel to act upon them: *Andrews* v. *Lyons*, 11 Allen.

EVIDENCE.

Statements of Patient to his Physician.—The statements of a patient to his physician as to the character and seat of his sensations, made for the purpose of receiving medical advice, are competent evidence in his favor, in an action to recover damages for a personal injury, even though such statements were not made till after the action was brought: *Barber and Wife* v. *Merriam*, 11 Allen.

Declarations of a Party.—The declarations of a party in possession are admissible in evidence against the party making them, or his privies in blood and estate: *Gibney* v. *Marchay*, 34 N. Y.

But such declarations are not competent as evidence to attack or destroy the title which is of record, &c.: per HUNT, J.: *Id.*

Books of Account.—After a physician has proved an employment, professionally, the entries in his book, of the visits, may be received, to show the number of visits: *Clarke* v. *Smith, Ex'r., &c.*, 46 Barb.

Such book is evidence of nothing else; and for this purpose it is not necessary, as in other cases, where books are admitted in evidence, to prove that the plaintiff keeps correct books, or that others have settled by them: *Id.*

The objection that the alteration in the law admitting parties as witnesses has rendered the books unnecessary as evidence, even if it had that effect in other cases, does not apply where the other party is dead; because in such a case he cannot testify: *Id.*

Declarations or Admissions of Assignors.—Declarations of the assignors of goods, made subsequent to the assignment, and after they have parted with the possession of the assigned property, are not competent evidence for parties sued by the assignees, for taking and selling the goods under and by virtue of a judgment and execution against the assignors: *Peck et al.* v. *Crouse et al.*, 46 Barb.

Declarations or admissions respecting the assigned property, thus made, by the assignors, after they have ceased to have any control over the goods, are not a part of the *res gestæ*, but only mere hearsay, and therefore are not competent evidence against the assignees, or the creditors whom they represent: *Id.*

Where the declarations or admissions relate to the intentions of the assignors—the secret operations of their minds—and not to anything they said to the assignees, the fact that one of the assignees was present and heard the declarations or admissions without denying their truth, will not make them binding upon the assignees, or evidence against them: *Id.*

Of Assignors' Intention.—What assignors did, before making an assignment, in contemplation of making it, is evidence upon the question of their intention in making it, proper for the consideration of the jury: *Id.*

The rule is well settled that where the validity of a sale or assignment of goods depends upon whether it was made with intent to hinder, delay, or defraud creditors, the judge is bound to submit the case to the jury: *Id.*

Admissions or Declarations of Parties.—The admissions or declarations of parties are competent evidence against them where parol evidence of the fact sought to be shown by such admissions or declarations would be competent: *Keator* v. *Dimmick*, 46 Barb.

Declarations of one in Possession, or having Title to Land.—The declarations of a person in the possession of land, as to his title, are admissible evidence against persons claiming under him, who subsequently come into the possession of the land: *Id.*

The rule that parol declarations of a person having title to land are inadmissible as evidence to defeat that title, only excludes declarations when the fact sought to be established by them cannot be proved by parol evidence: *Id.*

The declarations of a grantee in a deed, in respect to the time when the deed was delivered to him, made while he was in possession of the farm conveyed, are competent evidence, in an action of ejectment for dower, against a person claiming title to the land under such grantee: *Id.*

Executor.

Jurisdiction in Equity to compel Account.—One of two executors may maintain an action in equity, to call his co-executor to an account: *Wood, Executor*, v. *Brown, his Co-Executor*, 34 N. Y.

Although the complaint is inartificially framed to compel an accounting, if the facts stated plainly show that it is a case where the defendant should render an account, the court may compel an accounting under the prayer for general relief: *Id.*

The creditors, legatees, and next of kin are not necessary parties, except in case of a *final* accounting: *Id.*

Where the trusts under a will vested in the executor are distinguishable from those attached to his office, the court may dismiss him as to the former, and not as to the latter. But if one of several executors is guilty of misconduct in his dealings with the estate, the court will interfere, in a proper case, to regulate his conduct and compel him to place the notes, bonds, and other securities in his possession belonging to the estate, in such custody as to enable his co-executors to obtain access to the same; and may direct the mode in which he shall co-operate with his co-executors in discharging his duties as executor under the will: *Id.*

It seems the surrogate is authorized, under the statutes of this state, upon an accounting by the executor, to administer the same remedy: *Id.*

Express Company.

Delivery of Goods—What constitutes.—A delivery of a package by

an express company, to discharge the company, must be actual and *bonâ fide*, and not merely formal: *Am. Express Co.* v. *Haggard*, 37 Ill.

So, if the agent of the company abstracts a parcel while in the act of delivering it, it is no delivery, and the company will be liable even though a receipt be signed and the form of delivery gone through, by the agent's laying the property for a moment out of his hands: *Id.*

Fraud.

Trust ex maleficio.—A fraudulent use of the statutes for the prevention of frauds, &c., will not be permitted; and a court of equity will interfere against a party intending to make such statute an instrument of fraud: *Ryan et al.* v. *Dox*, 34 N. Y.

Where a purchaser under a foreclosure sale undertakes to purchase for the benefit of the mortgagor, and thus acquires the title at a price greatly below its value, he will be deemed the trustee of the party for whom he has undertaken the purchase, and, on tender to him of the purchase-money and interest, he will be compelled to convey the property to the party equitably entitled: *Id.*

It is no objection that the agreement, by which he undertook to purchase for the benefit of the owner of the equity of redemption, was not in writing. The law makes him a *trustee ex maleficio: Id.*

Frauds, Statute of.

Parol Promise to pay Profits of Sale of Real Estate.—A parol promise to pay to another a portion of the profits made by the promissor in a purchase and sale of real estate is not within the Statute of Frauds; and, if founded upon a sufficient consideration, will support an action: *Trowbridge* v. *Wetherbee*, 11 Allen.

Gold Coin.

Payment of Debt in Gold without Special Contract as to Rate of Value.—Gold dollars of United States coin, if applied towards the payment of a debt, without any special contract as to the rate at which they are to be taken, cannot be treated as having any greater value than any other currency which is a legal tender for the payment of debts; and English sovereigns, if applied towards the payment of a debt, are to be computed according to the real par of exchange, that is, having reference to the gold coin of the United States: *Bush and Others* v. *Baldrey*, 11 Allen.

Growing Crops.

Title to Crops on Land of a Decedent.—The Revised Statutes, making "growing crops" on the land of the deceased, at the time of his death, assets in the hands of his executors, &c., have not changed the law as to the construction of wills, in the ultimate disposition thereof: *Bradner* v. *Faulkner*, 34 N. Y.

Such "growing crops" now, whether bequeathed or devised, go primarily to the executor, &c., to be used, if necessary, for the payment of debts and legacies; but if not necessary for that purpose, they go to the beneficiary under the will: *Id.*

The devise of a farm, in the absence of any modifying words, now as before the statute, carries with it the crops growing thereon: *Id.*

HIGHWAY.

Rope stretched across—Liability of City for Accident.—A rope stretched across a highway, above the ground, and attached at each end to objects which are outside of the limits of the highway, and in temporary use, is not a defect or want of repair in the highway for which a city is liable to a traveller who receives an injury from coming into collision with it, while it is in motion from human agency: *Barber and Wife* v. *City of Roxbury*, 11 Allen.

INJUNCTION.

To restrain a Nuisance.—Where mill property has been used and occupied by a party, and those under whom he claims, and to the same extent, under a title and claim of right as against all the world—individuals and the public—for a period of forty years, he cannot be disturbed, or subjected to restraint, in the exercise of any of the rights pertaining to such property, except upon the ground that it is a public nuisance: *The City of Rochester* v. *Erickson*, 46 Barb.

If it is such a nuisance, no period of use and occupancy, however extended and uninterrupted, and under whatever claim of right, will protect it from abatement by the public authorities, or the preventive remedy by injunction to restrain its perpetuation by additions and repairs: *Id.*

A plaintiff, asking for an injunction to restrain the owner of a building, situated upon the bank of a river, from erecting a foundation-wall for the support of such building, on the ground that such building and wall will project into the channel of the river and interrupt the natural flow of the water, and thus constitute a public nuisance, must affirmatively establish the fact that a nuisance will be created by the completion of the wall, with clearness and reasonable certainty, or he will not be entitled to that species of relief: *Id.*

It is not enough to make out a doubtful or possible case of danger, but the danger apprehended must appear to be imminent, and, in the natural course of events, clearly impending, and the mischief in its nature and character irreparable: *Id.*

If it appears, in such a case, with reasonable clearness and certainty, that the wall, and the building of which it is to form a part, occupies or is designed to occupy any portion of the bed of the river, and will naturally and necessarily obstruct the natural flow of the water in the channel, and in this way contribute in any considerable and appreciable degree to the overflow of the river banks, at that point, in periods of high water, it is a public nuisance, and the right to an injunction, at the suit of the city corporation, clear and unquestionable: *Id.*

INSURANCE.

An insurance effected by an executor, in his own name, on property of the estate he represents, enures to the benefit of the estate, and the insurance-money belongs to the estate, and can be sued for and recovered by the residuary legatee: *Colburn et al.* v. *Lansing et al.*, 46 Barb.

LANDLORD AND TENANT.

Action for Use and Occupation.—In an action for use and occupation, it is not necessary to prove the defendant to have been in manual occu-

pation of the premises during the time for which recovery is sought. If the power to occupy and enjoy is given by the landlord to the tenant, so far as the landlord is concerned, he has performed on his part, and the action is maintainable: *Hall, Executrix*, v. *Western Transportation Co.*, 34 N. Y.

Where defendants leased a barn for the term of three years, and took possession and actually occupied the same for one year, and continued to keep the key, but did not actually occupy: *Held*, he was liable in an action for use and occupation: *Id.*

Limitations, Statute of.

In an action on a promissory note, brought by an assignee thereof, the plaintiff may raise the objection that a set-off against his assignor (the payee), averred in the answer, is barred by the Statute of Limitations: *Thompson* v. *Sickles*, 46 Barb.

The rights which the payee of a note possesses, to set up the Statute of Limitations against a demand of the maker, urged as a set-off, may, with great justice, be deemed an incident to the note, its principal, and as passing with it, to the assignee thereof.: *Id.*, per Clerke, J.

There is no substantial reason why the benefit of the Statute of Limitations should not be extended to the assignee or transferee of any assignable demand, *it seems*: *Id.*, per Clerke, J.

Merger.

Merger never takes place, except where the legal and equitable estate unite in the same person; and not even then, when it is the clear intent of all parties in interest that it shall not take place: *Bascom* v. *Smith*, 34 N. Y

Pleading.

Plea in Abatement—Motion—Which may be resorted to.—Where a party who is sued as a corporation, seeks to raise the question whether the defendant is a corporation, upon matter *dehors* the record, the question is one to be presented by plea in abatement and not by motion: *American Express Co.* v. *Haggard*, 37 Ills.

Plea in Abatement—Must give a better writ.—In an action against the American Express Company, sued as a corporation, a plea in abatement was filed in the names of "Johnston Livingston, William G. Fargo, Henry Wells and others," admitting that they, "together with others," were doing business under the name by which they were sued, but denying that the company was a corporation. The plea was held bad, because it did not give the plaintiff a better writ: *Id.*

It should have set forth who were the "others" with whom Livingston, Fargo and Wells say they were doing business under the name of the American Express Company, in order that the plaintiff might know against whom to bring his suit, if the plea should prove to be true: *Id.*

Reply.—An answer, in an action on a promissory note, alleging a set-off against the plaintiff's assignor, does not contain a *counter-claim*, requiring a reply, to put the new matter in issue: *Thompson* v. *Sickles*, 46 Barb.

Joinder of Causes of Action.—In an action brought by the receiver of a judgment-debtor, the subject of such action being the restitution of the property of the judgment-debtor, the plaintiff may unite in his complaint all the different claims which he has against the

defendant, upon that subject of action, and set forth therein different transactions out of which his right to restitution flows; although to reach that result, in some instances, it will be necessary to set aside transfers void for usury: *Palen, Receiver, &c.*, v. *Bushnell*, 46 Barb.

Practice.

Attachment.—A subsequent attachment-creditor cannot move to discharge an attachment issued in a prior suit, on the ground that it was irregularly issued. He has no standing in court to make such a motion: *Isham* v. *Ketchum*, 46 Barb.

Where a subsequent creditor does not allege or pretend that the debt or claim for which the first action was brought was not just and *bonâ fide*, nor that there was any collusion between the plaintiff and defendant in that action, he should not, on principle, be permitted to make such a motion: *Id.*

Railroad Companies.

Free Passes—To what Extent Railroad Companies may, by special Contract, be exempted from Liability for Injuries to Passengers.—A passenger, while travelling in the cars, received injuries from a collision of trains. At the time of the accident, he was travelling under a free pass, upon the back of which was this printed indorsement:—

"The person accepting this free ticket assumes all risks of accidents, and expressly agrees that this company shall not be liable, under any circumstances, whether of negligence of their agents, or otherwise, for any injury to the person, or for any loss or injury to the property, of the passenger using the ticket."

In an action on the case against the company, to recover damages for the injuries thus received; it was *held*, that this agreement did not exempt the company from liability for the gross negligence of its employees, but it did exempt it from liability for any other species or degree of negligence not denominated gross, or which might have the character of recklessness. For such unavoidable accidents, as will happen to the best managed railroad trains, this agreement would be a perfect immunity to the company: *Illinois Central Railroad Co.* v. *Read*, 37 Ills.

Railroad companies have a right to restrict their liability as common carriers, by such contracts as may be agreed upon specially, the companies still remaining liable for gross negligence or wilful misfeasance, against which good morals and public policy forbid they should be permitted to stipulate: *Id.*

The indorsement upon the back of this pass was not a mere notice, like the one in *Newhall's Case*, 24 Ill. 466; the free ticket was a gratuity, and the acceptance and use of it established the indorsement thereon, as an agreement between the party giving and the party receiving. By using the ticket, the passenger assents to the terms on which it was given, and it becomes, to all intents and purposes, an agreement: *Id.*

Sheriff.

Damages in Replevin.—Where a sheriff levied upon certain articles, on an execution against B., as his property, and an action of replevin is brought by A., who claimed to be the owner, against the sheriff, and where the property has been delivered to A., in the action, the recovery

of the sheriff, upon a verdict in his favor, is not limited to the amount of the execution on which the levy was made, but should be for the value of the property: *Buck* v. *Remsen, Sheriff*, 34 N. Y.

Shipping.

Bill of Lading—Evidence of the Voyage.—A bill of lading signed by the master of a vessel by request of the charterers' agent, is not conclusive evidence of the course of the voyage which the master is to pursue, if the charter contains mutual stipulations as to the course of the voyage and the mode in which the vessel is to be employed, and there are other circumstances to show that the bill of lading was not intended to have this effect: *Cobb* v. *Blanchard and Others*, 11 Allen.

If a vessel is chartered for a voyage from a port in Sicily to Boston, with the privilege of using a second port in Sicily within certain lay days, which are fixed, and on arriving at a port in Sicily the master takes in part of a cargo and signs a bill of lading which is prepared for him by the plaintiff's agent and which recites that the vessel is "bound for Boston," and he thereupon sails at once for Boston, without waiting for a full cargo or the expiration of the lay days, the bill of lading is not conclusive evidence, in an action by the charterer against the owner to recover damages for the injury caused thereby, to show that the master was bound thus to sail at once directly for Boston, or that he exercised good faith in so doing; but if there is evidence tending to show the contrary, the question should be submitted to the jury: *Id.*

Bill of Lading.—A bill of lading can be transferred by delivery, merely, without any indorsement or written assignment, so as to transfer the property in the goods which it represents, to the holder: *The Marine Bank of Chicago* v. *Wright*, 46 Barb.

It was agreed between V. and W. & L. that W. & L. should advance money to V. to buy corn at Chicago, to be put in store and shelled, and to be the property of W. & L. while in store, so far as they had advanced money on it, and to be shipped for their account, and the bill of lading to be sent to them, and their advances reimbursed from the proceeds of the corn. V. purchased and shipped several cargoes of corn, and drew on W. & L. for the amount. To procure funds to pay for the last cargo shipped, V. drew a bill upon W. & L. for $3500, which was discounted by the plaintiff, V. at the same time delivering to the plaintiff a duplicate bill of lading of the corn, attached to the draft: *Held*, that no right of lien, founded on the general arrangement between V. and W. & L., and the payment by the latter of a larger sum by way of advances than the aggregate of V.'s purchases, could prevail against the plaintiff's special or specific rights as the *bonâ fide* transferee of the bill of lading: *Id.*

Tort.

Personal Action.—An action of tort in the nature of trespass *quare clausum fregit* is a personal action and may be commenced by trustee process, returnable in the county where the trustee lives, although that is not the county where the land is situated: *Way* v. *Dame and Others*, 11 Allen.

TRESPASS.

Arrest and Imprisonment.—In trespass, all who aid or assist are principals. Hence, one who directs the imprisonment of another is guilty of the imprisonment: *Green* v. *Kennedy*, 46 Barb.

Where a superintendent of police tells the officer who has made an arrest to take the prisoner back and lock him up, in contemplation of law, he does the act which the officer does in following the direction: *Id.*

He is not permitted to show that the act was not the consequence of the request, which the law adjudges to be part and parcel of the act itself: *Id.*

He cannot direct a trespass, and, after its commission, escape upon the ground that the officer violated his duty in obeying the direction: *Id.*

USURY.

Action to recover back Usurious Interest.—Where a statute gives an action to the party aggrieved, there is an interest vested in him: it is not a personal right: *Palen, Receiver, &c.*, v. *Johnson*, 46 Barb.

Hence, under the section of the statute giving to every person who shall pay usurious interest for a loan a right of action within one year, for the excess of interest, the *receiver* of a borrower, appointed in supplementary proceedings, may sue: *Id.*

Usurious interest cannot be recovered back, except under the statute. If the action to recover it back is not brought within the time prescribed by the statute, viz., one year from the time of payment, it cannot be sustained: *Id.*

VENDOR AND VENDEE.

Sale of Hay by Person in Possession of Land—Replevin.—When a party in possession of land, claiming adversely to all others, sells to a third party the hay cut therefrom during such occupancy, the legal title thereto passes to his vendee, as against a party claiming title to said premises, although not in possession: *Stockwell* v. *Phelps*, 34 N. Y.

Replevin *in the cepit* can only be brought where trespass could be maintained; and that will only lie for an injury to the land in possession of the plaintiff: *Id.*

WARRANTY.

Of Merchantable Quality by Broker.—A merchandise broker can have no implied authority, from the usage of trade, to warrant goods sold by him to be of merchantable quality; and evidence to prove such usage is inadmissible; and a memorandum made by such broker of a contract for the sale of goods is invalid and inadmissible in evidence, if he has inserted therein, without express authority, a warranty by the seller that they are of merchantable quality: *Dodd and Others* v. *Farlow and Another*, 11 Allen.

Covenant of Indemnity against Suits.—Where the covenant is one of general indemnity merely against claims and suits, want of notice of an existing suit against the principal does not go to the cause of action, but the judgment is *primâ facie* evidence only against the indemnitor; and, in a suit upon his covenants, he may be let in to show that the principal had a good defence, which he neglected to make, to

defeat the judgment; or that the judgment was obtained by fraud or collusion, &c.: *Bridgeport Insurance Co.* v. *Wilson et al.*, 34 N. Y.

The same rules in respect to notice, which apply to the indemnitor, apply also to his sureties: *Id.*

Of Title—Voucher of Warrantor.—If one who has conveyed land with a covenant to warrant and defend the title is vouched in by his grantee to defend a suit brought against him by one claiming an adverse title, he in his turn may vouch in his grantor, who conveyed the premises to him with a like covenant, to defend the same suit: *Chamberlain* v. *Preble*, 11 Allen.

One who has been duly vouched in to defend a title which he has covenanted to warrant and defend, will be bound by the result of the suit, establishing the adverse title, although he did not appear therein, and although it was decided upon an agreed statement of facts, in which a fact was misstated, which if correctly stated would have defeated the adverse title, provided such statement of facts was agreed to in good faith and without collusion: *Id.*

WITNESS.

How Impeached.—The law does not presume that a person of mature age whose general character has been notoriously bad, up to within a period of five years, has reformed, so as to have acquired an unimpeachable reputation, since that time. Reformation may be shown in answer to the attack, but the law will not presume it in advance: *Rathbun* v. *Ross*, 46 Barb.

On the trial of a cause, a party offered to prove the general character of a witness when he resided in the town of A., by a person who had knew him there, some five years before the trial. The evidence was objected to, on the ground that the witness sought to be impeached had had a fixed residence in another place, for the last three or four years, and that the evidence should be directed to his present character, at the place of his present residence: *Held*, that a decision excluding the evidence was clearly erroneous: *Id.*

A party cannot prove by a witness himself, and by other parol testimony, that the witness has been convicted of a felony and sent to the state prison. The record is the best evidence in such a case: *Id.*

Parol evidence to prove that a witness has been an inmate of a state prison, is not admissible, that not being evidence of general character, but of some particular fact, which can never be resorted to by a party attacking the credibility of a witness: *Id.*

Competency—Interest.—A grantor in a deed containing covenants for title, is not a competent witness on behalf of the plaintiff in ejectment, who relies upon the deed to prove its execution. He has a disqualifying interest in the result of the suit: *Hamilton* v. *Doolittle et al.*, 37 Ills.

In such a case the grantor would not be called against his interest; it would be to his interest to maintain the title which he had covenanted to make good: *Id.*

Such a grantor is for the same reason incompetent to prove that he gave notice to a subsequent purchaser, that he had already sold and conveyed the land to another person: *Id.*